

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELPIDIO MAGALUNA, ACCUSED-APPELLANT.

G.R. No. 66755. January 23, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Elpidio Magaluna was convicted of rape by the trial court under an information which read as follows:

"xxx xxx xxx

That on or about the 19th day of June 1972, at about 12:00 o'clock midnight, in the municipality of General Luna, province of Surigao del Norte, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through pretense and abuse of confidence, entered the house of Mr. and Mrs. Cancio E. Berte, which house was at that time occupied by their daughter JUDITH G. BERTE and other companions and once inside, with the use of a sharp-pointed bolo (sundangay), threat, force and intimidation, did then and there, wilfully, unlawfully and feloniously, have carnal knowledge with said JUDITH G. BERTE, who is his niece, against her will and without her consent, to the damage and prejudice of said JUDITH G. BERTE in the aggregate amount of P60,000.00.

xxx xxx xxx"[1]

The accused entered a plea of not guilty and proceeded to trial. In due time, the trial court rendered a decision finding the accused guilty of the crime charged, the dispositive portion of the decision reading as follows:

"WHEREFORE, the Court is of the opinion and so holds that the prosecution has satisfactorily proved beyond reasonable doubt that the accused committed the crime of rape under Art. 335 of the Revised Penal Code and sentences the accused to suffer an indeterminate penalty of Reclusion Temporal in its maximum period from SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY as minimum to TWENTY (20) YEARS as maximum.

With respect to moral damages the prosecution demanded in the information P60,000.00 as compensation for the physical suffering, mental anguish, social humiliation, besmirched reputation and embarrassment suffered by the complainant before her relatives and friends in the community where they reside.

However, the Supreme Court in relation to moral damages in a rape case (*People v. Velo*, 80 Phil. 438) considering the social standing and occupation of the victim awarded only the sum of P5,000.00 on that basis therefore, this Court orders the accused to indemnify the victim the sum of P5,000.00 as moral damages without additional imprisonment in case of insolvency pursuant to Art. 39 paragraph 3 of the Revised Penal Code."[2]

Magaluna appealed to the Court of Appeals. On 12 December 1974, the Court of Appeals issued a Resolution setting out therein its findings of fact but certifying the appeal to the Supreme Court pursuant to the provisions of Section 3, Rule 50 of the Rules of Court. The records were then forwarded to this Court.

On 13 March 1975, the Court issued a Resolution accepting the case and ordering its entry in the docket; then Associate Justice Fred Ruiz Castro, however, voted to remand the case to the Court of Appeals for rendition of proper judgment. On 22 April 1975, the Court considered the case submitted for decision "considering that both parties in this case which was certified to this Court by the Court of Appeals and docketed as such pursuant to the Resolution of March 13, 1975 had already filed their respective briefs in the Court of Appeals."

On 13 January 1984, however, almost nine (9) years thereafter, this Court returned the case to the then Intermediate Appellate Court.

"for the imposition of the proper penalty at the circumstances warrant, with the comprehensive written analysis of the evidence and discussion of the law involved, but the Intermediate Appellate Court refraining from entering judgment, and forthwith certifying the case and elevating the entire records thereof to the Supreme Court for review. (People v. Daniel, G.R. No. L-40330, November 20, 1978, as applied in People v. Lucas Ramos, G.R. No. L-49818, February 20, 1979; and People v. Francisco Centeno, et al., G.R. No. L-48744, October 30, 1981)."[3]

Acting on the mentioned instructions of this Court, the then Intermediate Appellate Court promulgated, on 16 February 1984 a decision,[4] the dispositive part of which reads as follows:

"WHEREFORE, with the sole modification as to the penalty which should be raised to reclusion perpetua as provided by law, the appealed judgment, being in all other respects in accordance with law and the evidence should be, as it is hereby, AFFIRMED with costs. Since under the Judiciary Act, the penalty of reclusion perpetua or life imprisonment can only be imposed under the exclusive jurisdiction of the Supreme Court, this Appellate Court refrains from entering judgment and forthwith certifies this case and elevates the entire records thereof to the Supreme Court for review pursuant to the doctrine in People v. Daniel, G.R. No. L-40330, Nov. 20, 1978, 86 SCRA 511 as applied in People v. Lucas Ramos, G.R. No. L-49818, Feb. 20, 1979, 88 SCRA 486, 490 and People v. Centeno, et al., 108 SCRA 710.

SO ORDERED."[5]

Before this Court, appellant Magaluna reiterates the assignment of errors made before the then Intermediate Appellate Court in respect of the decision of the trial court:

"1. The lower court erred in giving full faith and credit to the testimonies of complainant and her only witness, while rejecting altogether the truthful and credible testimony of defendant-appellant.

2. The lower court erred in finding that the crime of consummated rape was committed by appellant, or, that the elements of rape were present under the circumstances proven and the facts of record, and in not finding that what really happened, as truthfully related by the defendant-appellant (at the risk of challenging normal sexual beliefs) was provoked by complainant herself, but that defendant-appellant, moved by psychic, moral and filial considerations, desisted from consummating the sexual act.

3. The trial court grievously erred in convicting the defendant-appellant of the crime of consummated rape, after rejecting the prosecution allegation that a weapon consisting of a sharp-pointed bolo was allegedly used in the commission of the alleged offense, which was the supposed means in threatening and intimidating the complainant into submitting to the defendant-appellant, thus eliminating this essential element in the crime of rape.

4. The court a quo erred in finding the defendant-appellant guilty beyond reasonable doubt of the crime of simple rape, when the elements of this offense are absent, or have been negated by circumstance of voluntary conduct on the part of the complainant, and in sentencing the defendant-appellant to an indeterminate prison term of seventeen (17) years, four (4) months and one (1) day as minimum to twenty (20) years as maximum, and to pay the complainant the sum of five thousand pesos (P5,000.00) as moral damages, without additional

imprisonment in case of insolvency, pursuant to Article 39 of the Revised Penal Code.”[6]

The relevant facts as summed up by Reyes, L.B., J., in the Resolution of the Court of Appeals dated 12 December 1974, are the following:

"The complainant, Judith G. Berte, is single, twenty years of age. She is living in the house of her parents in the Municipality of General Luna, Surigao del Norte, with her sisters and younger brothers named Emalyn, Wendelina, Jennifer, Rudy, Jeva and Jerry.

On June 19, 1972, they were alone in the house, their father being then in Surigao City and their mother, in Barrio Cabalawan. At about 12:00 o'clock midnight on that date, while Judith was sleeping together with her sisters and brothers in the sala of their house, she and her half-sister Emalyn Ravelo were awakened by a call outside, mentioning her (Judith's) nickname and requesting, 'Ne, please open up because I want to sleep here.' Judith, recognizing the voice as that of the accused opened the door. The accused is familiar to her, he being the husband of the sister of her father. After she had opened the door, the accused entered the house and directly went to the bedroom upstairs. Judith then told him, 'Uncle, you sleep here outside because we will be the ones to sleep inside the bedroom.' The accused did not say anything and went inside the room.

Then, Judith and Emalyn went back to their mat in the sala to sleep. Shortly after she had been asleep, Judith was awakened and felt that someone was holding her shoulders and kissing her 'around her face and mouth and all parts of her body.' At that time she was very weak, having just been released from the hospital where she was treated for malignant malaria. She struggled hard to extricate herself from the hold of the accused, but she was 'overwhelmed by his strength.' The accused held her dress, including her chemise under it, at the neckline, pulled her up and dragged her towards the bedroom. Emalyn was awakened when Judith held her hand as she was being dragged away. The accused, who was holding a sharp pointed bolo, threatened Emalyn, saying: 'Do not say anything because the moment you will say something I will kill you.' Afraid, Emalyn was not able to say a word or do anything to help Judith. None of her other sisters and brothers was awakened.

Emalyn saw the accused drag Judith into the room, which was locked from the inside. Then, Emalyn heard commotion inside the room. She heard the 'kicking of their feet.'

Inside the room, the accused 'gagged x x x (the) mouth (of Judith) with a towel,' and then embraced her, 'rolled down' or 'removed x x x (her) pantie (sic),' and threw her to the floor. She resisted, but she soon lost her strength. He then placed himself on top of her, and 'his penis was placed in xxx (her) genital organ.' 'His penis penetrated inside x x x (her) vagina.' She testified that it was painful; that she was afraid; and that she 'was generally trembling after that x x x (she) was (became) unconscious.'

Emalyn Ravelo declared that after about ten minutes, Judith came out of the room crying, with her hair dishevelled and her dress torn. Right then and in the sala, Judith told Emalyn that 'she was raped by Elpidio Magaluna.'

Dr. Aida Cervantes of the Surigao Emergency Hospital, who conducted an examination on the person of Judith on June 21, 1972, made 'findings concomitant to loss of virginity,' stating that 'the vagina is swollen more or less congested.' She found 'evidence of hymenal tear.' According to Dr. Cervantes, 'it's possible there was recent sexual intercourse x x x, more or less the next (within) 36 hours.'

The prosecution introduced in evidence the dress of Judith (Exhibit "A") and her chemise (Exhibit "B"), which were torn; and her pantie (sic) (Exhibit "C"), the garter of which 'was cut off'. Judith had testified that the garter of her pantie (sic) was 'torn out' when the accused 'pulled' it.”[7]

The accused's version of the facts, also summarized by Reyes, L.B. J., presented the all too common defense that the offended party was really a female of loose sexual morals:

“The accused denied having had sexual inter-course with the complainant, and pictured her as a woman

lacking in decency. He testified, as follows: that he is a resident of the Municipality of Tandag, Surigao del Sur; that on June 14, 1972, he brought his father to General Luna from Tandag where the latter was hospitalized; that he remained in General Luna, and on the evening of June 19, 1972; after taking his supper in the house of his brother-in-law, Narciso Berte, he strolled around and had a drink in a store; that at about 2:00 o'clock the next morning, he went to the house of his other brother-in-law, Cancio Berte to sleep there; that upon reaching the house of Cancio Berte, he called Judith, Cancio's daughter, who opened the door and even went out to meet him; that upon knowing his purpose, Judith told him to sleep in the bedroom upstairs; that he went inside the house and Judith led him to the bedroom upstairs; that once inside the room, she told him to sleep on the cot; that he took off his shirt, lay on the cot and called her, 'Ne, you better massage me first'; that he wanted a massage then, as his neck was painful; that he could ask her to massage him, because she had done it several times before in Tandag where she used to study in college; that after Judith had massaged him, he turned his face upward while she sat on the side of the cot; that he told her about the men who were in love with her, mentioning one of them as a married man and another who was single; that she pushed him, saying: 'Uncle, even those little things you are reminding it to me'; that 'at once she lie (lay) down' on the side of the cot beside him; that she was lying face upward, with her head on his right arm, and he, on his side; that they continued their conversation in that position, talking about sweethearts and 'kissing stories'; that later, they were 'also kissing each other', but he did not say anything about love making; that while hugging and kissing each other, his left hand was touching her body; that she took off her pantie (sic), and he inserted his 'ring finger' in her genital organ several times; that when they were already excited, he pulled her up 'to place her conveniently on the floor'; that after she had stood up, he got a mat, spread it on the floor, and he took off his trousers; that she changed her mind 'somewhat resisting' and said, 'Just do not touch me, Tiyo, you might do it in excess'; and that he gave her a blanket and separated from her.[8]

The ultimate issue posed in this case is whether or not the trial court erred in believing the testimony of the prosecution witnesses -- the complainant, her sister Emalyn and the examining physician (Dr. Aida Cervantes) -- tending to show that the complainant had been sexually assaulted by appellant, and in disbelieving the self-exculpatory declarations of appellant.

The Court accords great respect to the factual findings of trial courts, particularly on matters of credibility of witnesses, since the trial judge had the opportunity of observing the attitude and deportment of witnesses while listening to them speak.[9] This general rule applies with special force in the instant case because, as a consequence of appellant's earlier appeal, the Court of Appeals also reviewed, indeed, it twice reviewed, the facts before finally certifying the case to this court.[10] The Court of Appeals twice affirmed in toto the factual conclusions drawn by the trial court.[11]

In his present appeal, appellant has failed to show any basis for departing from the above general proposition and for overturning the conclusions of fact of the trial court and the court of Appeals.

Appellant seeks to impugn the credibility of complainant by pointing to alleged inconsistencies between her testimony in court and her statements embodied in her affidavit given during the preliminary investigation. During the preliminary investigation, only her torn underwear was presented and appellant asks us to conclude that, therefore, the introduction in evidence of the torn dress and chemise of complainant Judith G. Berte during the trial must have been a mere afterthought and fabrication. We do not believe that the introduction of the torn garments of complainant during the trial constituted fabrication of evidence. Complainant and her sister Emalyn had declared that complainant's dress was torn because of and in the course of appellant's sexual assault upon Judith.[12] On this specific matter, there are no inconsistencies in the declarations of both Judith and Emalyn. To contend, as appellant does, that the introduction of the torn garments during the trial was part of a plot to fabricate evidence, is both pure speculation and a non sequitur; there was no obligation on the part of the prosecution to present all its evidence during the preliminary investigation.

Complainant, during direct examination, had stated that she had pleaded with Emalyn to “Please, help me”; her affidavit had not set out a similar plea. Further, complainant had declared during direct examination that she had been gagged with a towel by appellant Magaluna inside the bedroom, while her affidavit had indicated that she had been gagged while still in the sala, prior to being dragged into the bedroom by appellant. During cross-examination, complainant reiterated her statement made in her affidavit. We think that complainant's inconsistencies, if that is what they were, regarding her plea for help addressed to Emalyn and the gagging of her mouth merely represented minor lapses during her direct examination, which do not affect her credibility. Such minor lapses are to be expected when a person is recounting details of a humiliating experience which are painful to recall. She was testifying in open court in the presence of strangers, on an extremely intimate matter, which is not normally talked about in public; such circumstances may be expected to cause witnesses' narratives to be less than letter-perfect.[13]

Appellant also contends that complainant's basic testimony was inherently improbable. Complainant had waited until the fourth day after the claimed sexual assault before publicly denouncing appellant. Appellant also seeks to make much of the fact that complainant did not shout or scream when appellant started to kiss her on the face and other parts of her body in the sala where she lay sleeping before pulling her to the bedroom. Appellant also points out that though complainant had stated that the tip of the bolo wielded by appellant lay on her left shoulder, she had sustained no wounds while resisting appellant's efforts to haul her into the bedroom. Finally, appellant suggests that because complainant had admitted, under cross examination, that she had not seen appellant's penis actually entering her vagina, it was merely appellant's finger which had been inserted in her vagina and which had caused the multiple lacerations noted by the examining physician.[14]

The above contentions of appellant are thoroughly unconvincing. That complainant informed her father promptly upon his arrival that she had been assaulted sexually, is a compelling fact. That four (4) days elapsed before the public authorities were notified of the criminal assault upon the chastity of Judith G. Berte, is consistent with the tendency of Filipinos to conceal embarrassing or humiliating events until the victim's family reaches a consensus on the course of action to be taken.[15] In any event, Judith had effectively publicized the rape two (2) days after it had occurred when she informed Dr. Aida Cervantes that she had been sexually assaulted and for that reason, was requesting a physical examination[16]. Emalyn's testimony had corroborated Judith's statement that she had been dragged into the bedroom and in the course thereof, Judith's dress and chemise had been torn which torn garments were submitted as evidence in court.[17] There was, in other words, clear testimonial and physical evidence of the force exercised upon Judith by appellant which culminated in the rape.[18] Appellant's contention that no rape had in fact occurred because it had been his finger, rather than his penis, that had penetrated Judith's female organ, is a creative but totally unpersuasive defense. Judith testified clearly that she had sought to avoid appellant's efforts to thrust his penis into her by weaving her body from side to side and by parrying appellant's penis with her hands.[19] Appellant's claim that, in a sudden surge of moral concern, he had refrained at the last moment from penetrating Judith's female part because she had declined to have sex with him, was correctly rejected by the trial court as unworthy of belief. In a detailed analysis of that contention, the trial court said in part:

"xxx xxx xxx

No man of wisdom and understanding who is supposed to know what is the difference between right and wrong will choose the dead and silence of the night in a dark room and request a niece to massage him for the reason that his neck was painful. Granting that this might be true, why was it necessary that he touch on stories of men and women kissing and hugging each other if he was not motivated by lewd designs? If his purpose was to correct his erring niece, why do it in the middle of the night alone in a dark room? What he ought to do was to take the matter up with the parents with whom he admitted they were in good and in friendly relations.

xxx xxx xxx

The accused contended that he was provoked by complainant x x x. This contention can hardly be believed as only women of experience and ill-repute are likely to initiate such unsavory acts of undressing themselves before a man who is not their husband especially in this case as the victim is his niece and not a woman of the street but a member of a decent and respectable (sic) family of their place of residence. It would be a different case had the accused proved that he has carried a secret love affair with his niece before that incident but nowhere in the course of the investigation was the subject taken, on the contrary, accused has admitted that he consider (sic) her as part of his family.”

xxx xxx xxx[20]

Appellant also contended that Judith's testimony of coerced intercourse was belied by the circumstances that no sperm had been found in her vagina and no external signs of violence were noted on her body, by the examining physician.[21] The important consideration, however, in rape is penetration of the pudenda and not emission of seminal fluid and the former was clearly and convincingly established in this case when Judith declared that she had felt appellant's penis inside her vagina.[22] For conviction of rape, it is not necessary that the force employed upon the offended woman be of such magnitude as to leave external signs of injury upon her body; it is enough that the force employed was sufficient to consummate the rapist's intent to copulate with the offended woman.[23]

Like the Court of Appeals, the only substantive error which this court can find in the trial court's decision relates to the imposition of the proper criminal penalty and civil indemnity upon appellant. The penalty for rape provided in Article 335 of the Revised Penal Code, as amended, is reclusion perpetua, a single and indivisible penalty, which under the first paragraph of Article 63 of the Revised Penal Code, must be imposed upon a finding of guilt beyond reasonable doubt, regardless of the presence of any mitigating or aggravating circumstance. The provisions of the Indeterminate Sentence Law are consequently inapplicable to the instant case. We would ordinarily increase the civil indemnity imposed upon appellant to P30,000.00 in line with current jurisdiction on the matter.[24] However, we think that the callous violation of the trust and confidence reposed upon appellant as a close relative, albeit by affinity, by the offended party and her parents, justifies a civil indemnity of P50,000.00.

WHEREFORE, the Decision of the trial court dated 10 April 1973, finding the appellant guilty beyond reasonable doubt of the crime of rape, is hereby **AFFIRMED**, with the following modifications: (1) appellant shall suffer the penalty of reclusion perpetua; and (2) the award of civil indemnity or moral damages in favor of complainant Judith G. Berte is increased to P50,000.00. Costs against appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Record, p. 15.

[2] Brief for the Plaintiff-Appellee, pp. 1-2.

[3] Letter of the Clerk of Court, Supreme Court, to the Intermediate Appellate Court through the latter's Clerk of Court; Rollo, p. 77.

[4] “People of the Philippines v. Elpidio Magaluna.” A.C.-G.R. No. 14991-CR, February 16, 1984.

[5] Rollo, p. 90.

[6] Rollo, p. 109; Appellant's Brief, pp. 1-2.

[7] Rollo, pp. 67-70.

[8] Rollo, pp. 70-72.

[9] *People v. Fabro*, 191 SCRA 386, 390 and 395 (1990).

[10] Rollo, p. 82. The certification was made pursuant to the second paragraph of Section 13, Rule 124 of the Rules of Court. See also *People v. Saldivia*, G.R. No. 55346, 13 November 1991.

[11] Rollo, pp. 66, 72, 75 and 99; See *People v. Galang*, 174 SCRA 454, 459-460 (1989)

[12] TSN, 16 October 1972, pp. 15, 39 and 40-41.

[13] *People v. Mancilla*, 173 SCRA 373, 379 (1989).

[14] Appellant's Brief, pp. 28-32.

[15] *People v. Paragoso*, 166 SCRA 408, 413 and 420 (1988).

[16] TSN, 24 January 1973, p. 4.

[17] TSN, 16 October 1972, p. 12; TSN, 21 November 1972, p. 19.

[18] *People v. Murallon*, 189 SCRA 488, 493-494 (1990); *People v. Ando, Jr.*, 180 SCRA 412, 418-419 (1989).

[19] TSN, 20 November 1972, pp. 25-26.

[20] Record, pp. 100-101.

[21] Appellant's Brief, pp. 45-46 and 30.

[22] TSN, 21 November 1972, p. 26; *People v. Bacalso*, 195 SCRA 557, 564-565 (1991); *People v. Eclarinal*, 182 SCRA 106, 112 (1991)

[23] *People v. Bacalso*, *supra*.

[24] See, e.g., *People v. Torre Villas*, G.R. No. 93847-48, 14 November 1991, p. 9.

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